Supreme Court, U.S.
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No. 02-737

IN THE

Supreme Court of the United States

HAROLD E. STEELE, DON PETERSON,
REV. DAVID MAYNARD, HARMON WRAY,
AND REV. TOM BAKER, JR.,
Petitioners,

v.

INDUSTRIAL DEVELOPMENT BOARD OF
METROPOLITAN GOVERNMENT OF NASHVILLE AND
DAVIDSON COUNTY, METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
DAVID LIPSCOMB UNIVERSITY,
NATIONSBANK AND NATIONSBANK/TENNESSEE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the low interest loan, funded by tax exempt revenue bonds, made by the Industrial Development Board of the Metropolitan Government of Nashville and Davidson County, to David Lipscomb University, a pervasively sectarian institution, was direct state aid in violation of the Establishment Clause of the United States Constitution.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Don Peterson, Reverend David Maynard, Harmon Wray and Reverend Tom Baker, Jr., respectfully request a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.[1]

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported as *Steele v. Industrial Dev. Bd. of Metropolitan Government*, 301 F.3d 401 (6th Cir. 2002). [App. A]. The opinion of the District Court is reported as *Steele v. Industrial Dev. Bd. of Metropolitan Government*, 117 F.Supp.2d 693 (M.D. Tenn. 2000). [App. B].

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit ("Court of Appeals") was entered on August 14, 2002. [App. A].

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) and Rule 10(c), Rules of the Supreme Court United States, for a writ of certiorari to review this decision which conflicts with the Supreme Court's prior Establishment Clause decisions in *Tilton v. Richardson*, 403 U.S. 672 (1971), *Hunt v. McNair*, 413 U.S. 734 (1973), and *Roemer v. Board of Publ. Works of Maryland*, 426 U.S. 736 (1976), holding that state aid has the primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in its religious mission. *Hunt, supra* at 743.

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[1] The lead Plaintiff, Harold E. Steele, is no longer a party as a result of his death on April 1, 1998.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law respecting an establishment of religion...."

Title 42, United States Code, § 1983 provides in pertinent part:

> Every person who, under the color of any statute, ordinance, regulation, custom or usage of any State..., subjects, or causes to be subjected, any citizen of the United States... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress...."

STATEMENT OF THE CASE

Petitioners are state and local tax payers residing in Nashville, Tennessee who contend that the issuance of tax exempt revenue bonds by the Industrial Development Board of the Metropolitan Government of Nashville and Davidson County ("the Board") for David Lipscomb University ("Lipscomb") provides an impermissible direct economic benefit to a pervasively sectarian institution in violation of the Establishment Clause of the First Amendment of the United States Constitution.

During the early 1990's, Lipscomb undertook a major redevelopment project on its campus. To finance the project, Lipscomb sought a $15 million, low-interest loan from the Board. The Board approved the loan and financed it by issuing tax exempt industrial development bonds worth $15 million. The bond issue was also approved by Metro's Mayor Bill Boner as federally tax exempt. The loan from the proceeds of the bonds was used in part to construct and

equip a new library, to renovate and convert the old library into administrative offices, and to construct a new intramural athletics building ("or student activities center"), four new tennis courts, a new baseball stadium, an intramural field, and an addition to the school's Business Center. [App. B, 83a-84a].

The bonds are typical of industrial revenue bonds that are commonly issued for educational or industrial purposes. The bonds were issued by the Board pursuant to its authority under state law to issue bonds for the financing of projects for "[a]ny nonprofit educational institution in any manner related to or in furtherance of the educational purposes of such institution, including but not limited to classroom, laboratory, housing, administrative, physical education, and medical research and treatment facilities." Tenn. Code Ann. § 7-53-101(11)(A)(vii) (1990 Supp.).

Because the bonds were issued as education revenue bonds by the Board, the income produced by the bonds is exempt from state taxation. In addition, the bonds were approved by both the Board and the Metropolitan Government of Nashville and Davidson County's ("Metro") Mayor under the provisions of 26 U.S.C. § 103 (1994), making the interest on the bonds federally tax exempt. Consequently, the bonds carried a lower interest rate than conventional financing, and Lipscomb realized the financial benefit through the resulting lower interest rate on its loan from the Board. [App. B, 84a].

Although the Board is an instrumentality of Metro, the bonds do not constitute an indebtedness of either the Board or Metro. [App. B, 86a]. Neither the Board nor Metro can be held liable to pay any portion of the principal or interest on the bonds or any costs incident to their issuance. Tenn. Code Ann. § 7-53-306 (1985). No state or local government

tax revenues have been or will be spent as a result of the issuance of the bonds. [App. B, 86a].

Petitioners and/or their counsel objected to the issuance of the bonds as violating the Establishment Clause at public hearings and meetings of the Board held on April 10, 1990, April 16, 1990, May 30, 1990 and January 22, 1991. [App. B, 86a]. When the bonds were approved over their objection, petitioners filed suit in the United States District Court for the Middle District of Tennessee on May 30, 1991, challenging the validity of the Board's action in issuing tax exempt revenue bonds for the benefit of Lipscomb.

Lipscomb filed a motion for summary judgment, asserting that its receipt of tax exempt revenue bonds for its facilities expansion project was not a violation of the Establishment Clause, nor did it have the primary effect of advancing religion. [App. B, 87a]. Metro also moved for summary judgment. During oral argument on the motions, the trial court requested that the petitioners file a motion for summary judgment. [App. B, 87a]. Petitioners filed a motion for summary judgment, asserting that Lipscomb was so pervasively sectarian that a substantial portion of its function was subsumed in its religious mission and that the $15 million loan funded by tax revenue bonds had the impermissible effect of promoting religion as a matter of law.

On October 24, 2000, the trial court entered a memorandum and order granting petitioners' cross-motion for summary judgment and denying the respondents respective motions for summary judgment. *Steele v. Industrial Dev. Bd. of Metropolitan Government*, 117 F.Supp.2d 693 (M.D. Tenn. 2000). [App. B].

The trial court determined, based on the undisputed facts, that Lipscomb was a pervasively sectarian institution. The trial court's analysis of the facts which supports its conclusion is located in the record at App. B, 116a-129a. The trial court concluded that:

> The evidence presented in the depositions and literature of Lipscomb shows that, while Lipscomb may effectively teach a wide variety of secular courses, the central mission of the school is to inculcate and promote Churches of Christ doctrine as the true word of God. Students are taught entirely by Churches of Christ members; are informed of the importance of the Bible in all areas of their lives; are expected to attend Bible courses and chapel on a daily basis and surrounded by an environment thoroughly saturated by Churches of Christ doctrine. The school does not follow the Statement of Principles on Academic Freedom of the AAUP, and the section of the faculty handbook dealing with research states that the primary aim of every instructor should be to give superior academic instruction, emphasizing daily instruction in the Bible. Lipscomb's Board of Directors, which controls all major decisions of the school, contains only members of the Church of Christ. (*See also* App. B, Docket No. 209, Deposition of Harold Hazelip, attach. Ex. 26(A) at 6) Christian education is one of the three principal duties of the president of the school.

> In this environment, the chance that religion "would seep into the teaching of secular subjects," as discussed in *Roemer*, 426 U.S. at 751, 96 S. Ct. at 2347, seems inevitable.

[App. B, 128a-129a]
(footnote omitted)

The trial court also determined that the low interest loan of $15 million originated by the Board at Lipscomb's request constituted a direct economic benefit because it advanced Lipscomb's sectarian mission. The lower court held that:

> The form of aid provided to Lipscomb was a substantial, affirmative benefit that, unlike property tax exemptions, allowed Lipscomb to dramatically improve its facilities. Lipscomb improved not only its academic facilities, but the recreational facilities that would make the school more attractive to potential students. Students may only take advantage of these benefits if they agree to abide by the Churches of Christ aspects of the institution. This is a far cry from receiving bus fare to transport a student to the institution of his or her choice.

[App. B, 133a-134a]

The trial court further determined that the expansion funded by the proceeds from the revenue bonds was a high priority for Lipscomb and was part of its strategic plan to increase its enrollment from 2,250 to 3,000 students. [App. B, 134a]. At the relevant time period, donations to Lipscomb were down ten percent (10%) and student enrollment had dropped eight percent (8%). [App. B, 134a]. The trial court concluded that:

> Unlike the cases in which textbooks, teachers or teaching materials were either loaned to schools or provided to the students, Lipscomb received a flow

> of funds into its coffers provided by a loan from the Board. These funds did not merely supplement the teaching of secular subjects at Lipscomb; they were central to the school's stated goal of increasing enrollment. If Lipscomb's mission is to promote Churches of Christ doctrine, then Metro, through the Board, provided aid to promote Churches of Christ doctrine.

[App. B, 134a-135a]

The trial court also issued a permanent injunction enjoining the Board and Metro from using any additional tax exempt revenue bonds for the benefit of Lipscomb or any other pervasively sectarian institution. The trial court awarded petitioners nominal damages in the amount of $1.00 each and awarded petitioners' attorneys' fees.

Respondents timely appealed. In an opinion with a vigorous dissent, the Court of Appeals reversed the trial court, and granted summary judgment to Lipscomb and Metro. *Steele v. Industrial Dev. Bd. of Metropolitan Government*, 301 F.3d 408 (6th Cir. 2002) [App. A]. The majority opinion of the Court of Appeals held that the pervasively sectarian status of Lipscomb was not a relevant consideration in its Establishment Clause analysis. [App. A, 29a]. The majority opinion further held that the $15 million low interest loan originated by the Board at Lipscomb's request was not direct aid and was analogous to an indirect financial benefit conferred by a religiously neutral tax or charitable deduction. [App. A, 29a].

Petitioners request the Court to grant a Writ of Certiorari in this matter and to address the important Establishment Clause issue presented in this case.

REASONS FOR GRANTING THE WRIT

I. The Decision Rendered by the Court of Appeals Conflicts with Controlling Decisions of this Court.

In *Tilton v. Richardson*, 403 U.S. 672 (1971), *Hunt v. McNair*, 413 U.S. 734 (1973) and *Roemer v. Board of Publ. Works of Maryland*, 426 U.S. 736 (1976), this Court established that a government may not provide financial aid to a pervasively sectarian institution. As the trial court noted, these cases involve financial assistance provided to colleges and universities by states in the form of grants or proceeds from revenue bonds. [App. B, 105a]. These cases are controlling because their facts parallel the facts in the case at bar.

In *Tilton*, this Court stated that the "crucial question" concerning government aid to religiously affiliated schools "is not whether some benefit accrues to a religious institution as a consequence of the legislative program, but whether its principal or primary effect advances religion." 403 U.S. at 679. This Court recognized the possibility that there could be cases in which "religion so permeates the secular education provided by church-related colleges and universities that their religious and secular education functions are in fact inseparable." *Id.* at 680. These "pervasively sectarian" institutions cannot receive governmental assistance without the impermissible effect of advancing the religious belief of those institutions. *See Roemer*, 426 U.S. at 755.

The majority opinion rendered by the Court of Appeals recognized that the Supreme Court decisions which established the "pervasively sectarian test" have not been overruled and that this Court has directed that lower courts are to treat its prior cases as controlling until this Court specifically overrules those cases [App. A, 13a-15a], yet it

refused to apply the "pervasively sectarian test" in this case. Instead, it held that "the nature of the institution is not the relevant inquiry in the special type of aid at issue in this appeal." [App. A, 29a].

In a nutshell, the lower appellate court held that the Establishment Clause was not violated in this case because it determined that the nature of the aid conferred by the tax exempt revenue bonds is not direct aid and the revenue bond program does not present the perception of government endorsement of religion. [App. A, 29a-30a]. In so ruling, the majority opinion emphasized that the funding, which was available on a neutral basis, did not involve the expenditure of government funds, that bond holders had no recourse against the Board or Metro in the event of non-payment and that the benefit obtained by Lipscomb is the same provided to private companies which create identical economic opportunities. [App. A, 29a-30a].

The majority opinion rendered by the Court of Appeals is erroneous because it failed to follow *Tilton v. Richardson*, *supra*, *Hunt v. McNair*, *supra*, and *Roemer v. Board of Publ. Works of Maryland*, *supra*, and failed to hold that local government cannot provide direct financial aid to a pervasively sectarian institution.

While respondents may quibble about whether Lipscomb is a pervasively sectarian institution, the trial court held, as a matter of law, based on undisputed facts that Lipscomb was a pervasively sectarian institution. [App. B, 115a-129a]. According to the trial court, in the environment presented at Lipscomb, it seems inevitable that religion "would seep into the teaching of secular subjects." [App. B, 129a]. The Court of Appeals did not disturb the trial court's determination that Lipscomb was a pervasively sectarian institution. [App. A, 29a]. The majority opinion deemed that this controlling fact "is not the relevant inquiry in the special

type of aid at issue in this appeal." [App. A, 29a]. The dissent noted that based on the undisputed facts in the record, the trial court held that as a matter of law Lipscomb "is a pervasively sectarian institution and that the loan transaction amounted to a direct economic benefit for Establishment Clause purposes." [App. A, 49a].

The majority opinion erred in holding that the low interest $15 million dollar loan originated by the Board at Lipscomb's request was an indirect economic benefit analogous to a religiously neutral tax or deduction. [App. A, 23a]. In so ruling, the majority opinion failed to understand the petitioners' argument, which is that although the Tennessee statute permitting the issuance of revenue bonds is not unconstitutional on its face, its application to provide a $15 million low interest loan to a pervasively sectarian institution violates the Establishment Clause.

In an Establishment Clause case, it is important to examine the manner in which a statute is applied to provide aid to specific groups. As Justice Blackmun, writing for the plurality, recognized in *Roemer*:

> The State must confine itself to secular objectives, and neither advance nor impede religious activity. Of course, that principle is more easily stated than applied. The Court has taken the view that a secular purpose and a facial neutrality may not be enough, if in fact the State is lending direct support to a religious activity. The State may not, for example, pay for what is actually a religious education, even though it purports to be paying for a secular one, and even though it makes its aid available to secular and religious institutions alike. The Court also has taken the view that the State's efforts to perform a secular task, and at the same time avoid aiding in the performance of a religious one, may not lead it

> into such an intimate relationship with religious authority that it appears either to be sponsoring or to be excessively interfering with that authority.

426 U.S. at 747-48.

Thus, in evaluating the neutrality of a government aid program, the court must look at both the facial neutrality of the statute and the manner in which the statute is applied in providing aid to specific groups. *See Id., see also Bowen v. Kendrick*, 487 U.S. 589, 609-10, (1988) ("Of course, even when the challenged statute appears to be neutral on its face, we have always been careful to ensure that direct government aid to religiously affiliated institutions does not have the primary effect of advancing religion.").

The revenue bond statute as applied to provide a $15 million low interest loan to a pervasively sectarian institution, Lipscomb, provided a direct financial benefit which had the principal or primary effect of advancing religion.

As the trial court noted, Lipscomb intentionally sought government financing for its building program rather than private financing. [App. B, 132a]. From the government, it received a low interest government loan. While the bond holders benefited from the tax exempt nature of the bonds, Lipscomb benefited as well. The trial court noted that "Lipscomb has repeatedly stated that it received a substantial benefit from the tax exempt bonds – some thirty percent (30%) of the cost of the project – and that it could not have completed the project if it had not been granted this benefit by the Board and Metro." [App. B, 133a].

As the trial court noted, improving the library facilities and student center were high priorities for Lipscomb in 1989-90. Such an expansion was part of Lipscomb's plan to increase enrollment from 2,250 to 3,000 students. [App. B,

133a-134a]. At the time, donations to Lipscomb were down ten percent (10%) and student enrollment had dropped eight percent (8%) [App. B, 134a]. Lipscomb saved an estimated thirty percent (30%) of the interest it would have cost to find alternative financing for the construction projects and cannot say what projects would have gone unfunded if it had not received the tax exempt bonds. [App. B, 134a]. With the tax exempt bonds, Lipscomb was able to fully fund its construction projects. The trial court determined that "Lipscomb received a flow of funds into its coffers provided by a loan from the Board. These funds did not merely supplement the teaching of secular subjects at Lipscomb; they were central to the school's stated goal of increasing enrollment. If Lipscomb's mission is to promote Churches of Christ doctrine, then Metro, through the Board, provided aid that had the impermissible effect of promoting Churches of Christ doctrine." [App. B, 134a-135a].

The trial court determined that this low interest $15 million loan was a direct benefit to Lipscomb, holding that since the *Hunt* decision, this Court has implicitly recognized the bond proceeds loan structure in that case as an example of direct state aid. *See Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 842 (1995) (citing *Hunt* as one of the cases correctly cited by the Court of Appeals as establishing "the principle that we have recognized special Establishment Clause dangers where the government makes direct money payments to sectarian institutions.") [App. B 137a].

As the Court of Appeals dissent noted, the benefit conferred by the government to Lipscomb was not a passive benefit but rather affirmative involvement similar to a general subsidiary. [App. A, 73a-74a]. In *Walz v. Tax Comm'n.*, 397 U.S. 664 (1970), Justice Brennan explained this distinction as follows:

> Tax exemptions and general subsidies, however, are qualitatively different. Though both provide economic assistance, they do so in fundamentally different ways. A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources exacted from the taxpayers as a whole. An exemption, on the other hand, involves no such transfer. It assists the exempted enterprise only passively, by relieving a privately funded venture of the burden of paying taxes.

397 U.S. at 690-691
(footnotes omitted)

Thus, in finding in *Walz* that the property exemptions in question did not rise to the level of excessive governmental involvement, Justice Brennan noted:

> To the extent that the exemptions further secular ends, they do not advance "essentially religious purposes." To the extent that purely religious activities are benefited by the exemptions, the benefit is passive. Government does not affirmatively foster these activities by exempting religious organizations from taxes, as it would were it to subsidize them. The exemption simply leaves untouched that which adherents of the organization bring into being and maintain.

Id. at 693

In the case at bar, as the dissent noted, although no state funds were transferred through revenue bond financing employed in this case, the form of state aid exhibits the "affirmative involvement characteristic of outright governmental subsidy." [App. A, 74a]. The Board and Metro "affirmatively fostered" the activities of Lipscomb by

acceding to its request for a low interest loan funded by tax exempt revenue bonds. The issuance of the low interest loan to the pervasively sectarian educational institution in this case "employs the organs of government for essentially religious purposes by allowing Lipscomb to fund improvements to its University in order to advance its sectarian mission. By providing a low interest loan funded by tax exempt revenue bonds to a pervasively sectarian educational institution, the Board and Metro provided the kind of state aid that is characteristic of a direct governmental subsidy. [App. A, 74a-75a].

Thus, the dissent concluded, given Lipscomb's pervasively sectarian character, it must be concluded that Lipscomb's receipt of a direct economic benefit in the form of a low interest $15 million loan resulted in excessive governmental entanglement with the religious mission of the University. In view of Lipscomb's character and purposes, its "secular activities cannot be separated from sectarian ones." *Roemer*, 426 U.S. at 755. Because the religious and secular functions are inseparable at Lipscomb, no safeguard can ensure that direct monetary aid, even if designated to fund the school's secular activities, will not aid its religious mission. [App. A, 75a]. Even though the loan agreement explicitly prohibits Lipscomb from using any bond-financed facilities for religious purposes, there is not way to prevent that from happening because of Lipscomb's pervasively religious character. Although the loan agreement does contain restrictive language providing that Lipscomb shall not use the project for religious worship, religious instruction or the training of ministers or other persons in the field of religion, the trial court noted that there is no enforcement mechanism in regard to these restrictions. The Board assigned its entire interest in the loan to Sovran Bank. Banks have no duty to comply with the Establishment Clause in their financial transactions. Thus, the trial court concluded

that "the government has abdicated any responsibility for enforcing the use restriction." [App. B, 154a].

Since the sectarian and secular activities at Lipscomb are so inextricably intertwined, the government cannot avoid excessive entanglement with the sectarian mission of the University. *See Agostini v. Felton*, 521 U.S. 203, 234 (1997).

Further, the trial court determined that based on the official statement released by the Board and Lipscomb in connection with the 1991 Bond Reissue, the perception of a reasonable observer would be that the Board and Metro were endorsing Lipscomb and its sectarian purpose and beliefs. [App. B, 164a-167a]. The official statement describes Lipscomb's religious mission and affiliation in significant detail. [App. B, 165a-166a]. The trial court determined that taken together, the official statement shows Lipscomb to be a strictly religious school whose primary mission is to teach the values and benefits of the Churches of Christ. [App. B, 166a]. Thus, the trial court found that "[t]he structure and content of the official statement indicates to the reasonable observer that the Board, as an instrumentality of Metro, is endorsing the sectarian beliefs and teachings of Lipscomb." [App. B, 167a]. Thus, under the endorsement of religion test, the low interest $15 million loan to Lipscomb also has the impermissible effect of advancing religion. *See County of Allegheny v. American Civil Liberty's Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 592 (1989); *Wallace v. Jaffree*, 472 U.S. 38, 60 (1985), *Lynch v. Donnelly*, 465 U.S. 668, 691-92 (1984) (O'Connor J. concurring).

It is important to note that the financial benefit of the $15 million dollar low interest loan was not conferred on Lipscomb by independent choices of private individuals. This Court has found that there is no government support of religion where government funds are provided to individuals

who then decide to use those funds in support of religious education. *See Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8-10 (1993). The trial court determined that "[w]here the government funds are provided directly to the religious institutions without the intervening decisions of private individuals, government support is more likely to be found to have the effect of advancing religious purposes of the institution." [App. B, 147a]. *See also Agostini, supra* at 225-26; *Zelman v. Simmons-Harris*, 536 U.S. ___, 122 S. Ct. 2460 (2002).

In the case at bar, although the revenue bonds were marketed to private investors, the government, through the Board, *not* private investors, decided who would receive the benefit of the sale of the bonds. Thus, tax exempt revenue bonds are distinguishable from school vouchers. *Zelman v. Simmons-Harris, supra.* The private investors could not select which institution they wanted to receive the funds. The private investors merely chose to invest in tax exempt bonds. This is nothing like parents choosing to send their children to a parochial school. [App. B, 148a]. As Justice O'Connor has noted, "endorsement of the religious message is reasonably attributed to the individuals who select the path of the aid." *Mitchell v. Helms*, 530 U.S. 793, 843 (2000) (O'Connor, J., concurring in judgment). Since the government selected Lipscomb to receive the direct economic benefit of a $15 million low interest loan, an endorsement of that pervasively sectarian institution's religious purpose and message is "reasonably attributed" to Metro and the Board.

In short, the majority opinion of the Court of Appeals failed to apply controlling case law rendered by this Court to determine that the direct economic benefit conveyed by Metro, through its Board, to Lipscomb, a pervasively sectarian institution, violated the Establishment Clause.

II. The Court of Appeals Has Decided an Important Question of Federal Law that Has Not Been, but Should Be, Settled by this Court.

No other federal appellate court, including this Court, has addressed the issue of whether a local government's issuance of tax exempt revenue bonds to finance a low interest loan to a pervasively sectarian educational institution constitutes direct aid that violates the Establishment Clause. [App. A, 11a].

This is an issue of national importance that affects policies relating to the use of tax exempt revenue bond financing throughout the fifty states. The Court of Appeals noted, "The financing in question has been made available to colleges and universities in Metro, as well as throughout Tennessee and the United States." [App. A, 25a].

Numerous national organizations interested in the issue involved in this appeal intervened as *amicus curiae* in the Court of Appeals on both sides of this case. Two weeks before oral argument, the United States Department of Justice also intervened as an *amicus curiae* on the side of Lipscomb, arguing that the Court's decision would have a direct impact on the Bush Administration's proposed faith based charities programs.

The decisions of the District Court and the Court of Appeals have been widely reported in the national press. Their implications have been debated in both legal and religious publications.

The issue involved in this appeal is one of national importance, which should be decided by this Court.

CONCLUSION

Wherefore, since the Court of Appeals decision conflicts with controlling precedents and this appeal involves an issue of national importance, the Court is urged to grant the Petition for Writ of Certiorari, reverse the decision rendered by the Court of Appeals and reinstate the judgment of the District Court.

Respectfully submitted,

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